



**ACUPUNCTURE BOARD**  
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(Approved 1/30/01)  
**ACUPUNCTURE BOARD**  
**MEETING MINUTES**  
**September 28, 2000**  
**San Francisco Civic Center Complex**

**Full Board Meeting**  
**Thursday - September 28, 2000**

**MEMBERS PRESENT**

Shari Asplund, Vice-Chair  
Edmond Tong  
Justin Tin

**STAFF PRESENT**

Marilyn Nielsen, Executive Officer  
Don Chang, Legal Counsel  
Nancy Molinar, Education Coordinator  
Robin Saenz, Administrative Technician

**MEMBERS ABSENT**

**GUEST LIST ON FILE**

**1. Call to Order and Establishment of a Quorum**

Chair Shari Asplund called the Acupuncture Board meeting to order at approximately 10:15 a.m.

**2. Approval of June 27, 2000 Meeting Minutes**

**EDMOND TONG MOVED AND JUSTIN TIN  
SECONDED THE MOTION TO APPROVE THE  
JUNE 27, 2000 MEETING MINUTES  
MOTION PASSED UNANIMOUSLY**

**3. Vice-Chair's Report (S. Asplund)**

Ms. Asplund reported she hopes to have a full Board very soon. Ms. Asplund thanked the members for attending this meeting.

**4. Executive Officer's Report (M. Nielsen)**

Ms. Nielsen reviewed the information provided by the Board Relations office regarding the Board Member Legislative Workshop scheduled for November 1, 2000 in Sacramento, and encouraged all Board members to attend. Ms. Nielsen reported the second round of the Joint Legislative Sunset Review Committee (JLSRC) hearings are scheduled for December 2000. The Acupuncture Board is scheduled for the third round of the JLSRC and the report will be due October 1, 2001 with the hearing later that fall. Ms. Nielsen indicated she would be attending the second round hearings to get a perspective on what the legislature committee will be focusing on and wouldn't recommend assigning a task force committee until we get further along which should be early 2001.

**5. Executive Business (Discussion/Action) (M. Nielsen)**

**a. 1999/2000 Year End Expenditure Report**

Ms. Nielsen reported on the budget expenditure information provided in the Board packet. Budget allotment for fiscal year 1999/2000 was \$1,904,322; of which \$1,701,968 was expended as of June 30, 2000 leaving a reserve revision amount of \$202,354 surplus.

**b. 2000/2001 Budget Change Proposals (BCPs)**

Ms. Nielsen reported on the information provided in the Board packet. Ms. Nielsen indicated the Department of Consumer Affairs (DCA) submitted 49 approved BCP's to the Department of Finance of which two were the Acupuncture Boards. The Department of Finance is requiring a 1% ceiling at agency level totals for BCP requests augmenting new position. Department of Finance is expected to release their final decisions by the end of October 2000.

**c. Year 2000 Legislation - AB 2888 DCA Omnibus Bill**

Ms. Nielsen reported on the information provided in the Board packet indicating the Governor signed AB 2888, DCA's Omnibus Bill which effected sections 4935, 4938, 4938.1, 4939, 4945 & 4970, on September 26, 2000.

**d. Legislation that may impact the Board**

Ms. Nielsen reported on the information provided in the Board packet indicating the Governor vetoed SB466 on August 7, 2000.

- 1. SB 466 – Amending Sections 4927 and 4937** adds lasers, magnets and strengthens herbal prescription privileges in the practice of acupuncture.
- 2. AB 2764 – Herb Sales Tax: Exemption** provides for a sales tax exemption for herbs sold by a licensed acupuncturist.
- 3. AB 2245 – Expanding No. Of Allowable Medical Treatments** under the Medi-Cal program, limits the number of visits to six visits in a three-month period.
- 4. AB 2439 - New Requirements for Rulemaking Process** will require new technical reporting and documentation requirements for rulemaking process.

**e. Regulations**

**1. Year 1999/2000 Regulations, Title 16, California Code of Regulations Sections 1399.417, .443, .444, .445 - Elimination of Reference to Clinical Exam**

Ms. Nielsen reviewed the information in the Board packet and indicated the rulemaking package for Sections 1399.417, .419, .443, .444 & .445 were filed with DCA and the Office of Administrative Law in September 2000.

**Section 1399.417(c)** eliminates the term written and clinical, due to AB 1105 where the Board will develop and administer a written theoretical and practical examination in place of the written and clinical examination to become effective January 2000.

**Section 1399.443(a) (d)** eliminates terminology, which pertains to the clinical examination as the clinical examination has been eliminated.

**Section 1399.444** eliminates terminology, which pertains to the clinical examination as the clinical examination has been eliminated.

**Section 1399.445** eliminates the entire section as all terminology pertaining to the clinical examination has been eliminated, and replaces it with candidate transition language.

**2. Year 2000/2001 Regulations, Title 16, California Code of Regulations**

**a. Section 1399.456 - Use of Title Doctor of Oriental Medicine** will allow licensed acupuncturists who have obtained their doctorate degree from an accredited, approved or authorized educational institution outside of California to use the title Doctor of Oriental Medicine. Ms. Nielsen reviewed the information in the Board's packet, adding the Department returned the regulation unsigned. Ms. Nielsen indicated Lynn Morris, Deputy Director of Board Relations, attended the public hearing on June 27 and was concerned about the opposing testimonies given at the meeting and stated they needed to be addressed. The Board member's had those same concerns and tabled the discussion for a future Board meeting.

**b. Sections 1399.419 & .440 - Examination Administration & Results section 1399.419(c)** changes the time frame in which examination results must be mailed from 30 days to 60 days. Section 1399.440 eliminates the requirement that if the same examination is administered in more than one location, then it shall be administered concurrently in each location. These sections were adopted at the June 27, 2000 Board meeting with no amendments. Staff is awaiting return of the executed fiscal impact from DCA to proceed.

**c. Sections 1399.436 and 1399.415 - Educational Admission and Curriculum Standards** section 1399.436 increases the required number of hours to 3,200 and modifies the criteria for Board approved acupuncture training programs, amends admission standards, specifies the accrediting body for institutions located in California, or within the United States, and the evaluation service to be used for evaluation an applicant's education if it was obtained at an institution located outside of this country. Section 1399.415 designates January 1, 2000 as the effective date to implement the 3,200-hour curriculum requirements. Ms. Nielsen reported a written notice dated September 21, 2000 was received from the Department under Ms. Morris signature indicating Regulation 1399.436 and .415, which was adopted by the Board on June 27, 2000, was being returned unsigned. Ms. Morris indicated in the notice the regulation did not demonstrate a need for the increase, the curriculum was sufficient, and because it is a significant change in Board policy it warranted consideration by adequate complement of Board members. Ms. Nielsen indicated although the notice indicated the package had been returned, at this time it had not been received back at the Board office. Ms. Asplund requested Don Chang, legal counsel, to comment on the statement, the regulation doesn't demonstrate a need for an increase. Mr. Chang indicated there clearly is a misunderstanding. The only thing submitted were the notice and the fiscal impact statement, which needs to be signed by the Department. As a precondition to obtain the fiscal impact sign off from Agency, the Department needs to sign off first. Normally, once the regulation is adopted by the Board, the rulemaking package is submitted to the Director for approval thirty days prior to OAL, and the Director does have the authority to veto or reject a normal regulation if it deems to be a potential risk to public health, welfare, or safety. A rulemaking package setting licensing standards is not within that authority. If a normal rulemaking package is rejected, the Board can override that veto by the unanimous vote of the full Board; we have not reached that stage yet. Again, the law does make an exception in relation to the Director regarding regulations for examination or qualifications for licensure. These proposed regulation changes give curriculum standards as it pertains specifically to qualification for licensure. These regulations would be exempt from having to be resubmitted to the Director for approval after you have adopted them, however the question arises is it feasible to file a rulemaking package with the Office of Administrative Law (OAL) if we don't have a signed fiscal impact from Agency. Mr. Chang indicated that clearly the Director does not have the authority to veto the regulation based on the risk to public health, welfare, or safety. There is a misunderstanding in the letter Ms. Morris wrote where she states she is returning the regulation based on necessity which is not one of the grounds for resubmission. The next step would be for Ms. Nielsen to proceed with the filing of the final statement of reasons and at that point make a decision whether to file it with OAL directly explaining we have followed all the proper protocols. Mr. Tong requested in writing from legal counsel the analysis, which was just presented. Mr. Tong would recommend Ms. Nielsen prepare the final statement of reasons and would encourage the Ms. Nielsen to speak with the Governor's staff regarding some of the underlying issues. Mr. Tong recommended communication be done in writing with regards to the fiscal impact statement.

**PUBLIC COMMENT:** Dr. Haines PCOM stated even though a school may be at the 3200 hour level it doesn't mean there won't be no impact.

**f. Development of Consumer Brochure (S. Asplund)**

Ms. Asplund reported a meeting was held in June with the Department of Consumer Affairs Communications and Education division to discuss the development of the consumer brochure. Ms. Asplund has drafted a brochure and submitted it to Acupuncture Board staff for review. Ms. Nielsen would recommend a final draft copy be brought to the Board for approval. Mr. Tong would encourage Ms. Nielsen to move forward with the brochure and bring it back to the Board no matter how many members there are.

**6. Enforcement Business (Discussion/Action) (M. Nielsen)**

**a. Current Enforcement Cases**

Ms. Nielsen reviewed the information provided in the Board packet. Ms. Nielsen indicated there is a new issue regarding Acupuncturist performing acupuncture on animals, which is not within the Acupuncture scope or within the Veterinary Medical Board scope. There is a group of Acupuncturist interested in amending the laws and staff has provided them with information. Mr. Tong questioned legal counsel on what would preclude an Acupuncturist from treating an animal. Mr. Chang indicated treating an animal would be practicing veterinary medicine and an Acupuncturist is not authorized to practice veterinary medicine. Veterinarians are allowed to work with registered or unregistered assistants. Therefore, as long as the Acupuncturist is working in conjunction with the Veterinarian as an unregistered assistant and not independently, there would not be a problem.

**b. Joint Law Enforcement Task Force Meeting**

Ms. Nielsen reported there were 128 different representatives of law enforcement who attended the June 2000 Joint Law Enforcement Task Force meeting in Los Angeles. Ms. Nielsen indicated the meeting provided valuable information, which may be useful in future, legislative enforcement issues. The meeting was a confidential meeting and by invitation only.

**7. Examination Business (Discussion/Action) (M. Nielsen)**

**a. June 12, 2000 - Written Licensing Examination**

Ms. Nielsen indicated 555 took the June 12, 2000 written licensing exam. There was a 56% pass rate or 310 candidates.

**b. June 22, 2000 - Written Practical Examination (i.e., old clinical re-takes)**

Ms. Nielsen indicated 43 candidates took the Written Practical held June 22, 2000 in Sacramento.

**c. December 13, 2000 - Written Licensing Examination**

Ms. Nielsen reported Fall Winter 2000 Written Licensing exam has been scheduled for December 13, 2000 at the Sacramento Convention Center. The exam administration will be utilizing both the first and third floors, which should eliminate any noise problems, this administration.

**d. December 7, 2000 - Written Practical Examination (i.e. old clinical re-takes)**

Ms. Nielsen reported the Written Practical exam will be administered on December 7, 2000 in Sacramento. Ms. Nielsen indicated this is the final exam to administer to the retakes of the old clinical. Those candidates who do not pass this exam will be required to take the full written licensing exam thereafter.

**e. Master Service Agreement with Experior Assessments to Administer Computerized Licensing Exam**

Ms. Nielsen reported in a recent meeting with Experior and the Office of Examination Resources issues regarding computerized exam administration were discussed. Meetings will continue until all the details are worked out and acceptable to both the Board and Experior. Ms. Nielsen will continue to update the Board on the progress.

**8. Education Business (Discussion/Action) (M. Nielsen)**

**a. Pending New School Applications**

Ms. Nielsen reported the Board recently received three new school applications. The site visit for Houston, Texas is scheduled in November 2000.

**b. School Site Visit - University of East - West Medicine, Sunnyvale**

Ms. Nielsen reviewed the school site visit report for the University of East West Medicine (UEWM). UEWM had five representatives attend the meeting, they were Jay Atkinson, Board of Directors, Ying Q. Wang, President, Clement Shi, Operations and Administration, Greg Shim, Marketing Rep/Registrar, Chris Macie, Instructor/Board of Directors. The Board members were concerned regarding the length of time the university will need to comply.

**MR. TONG MOVED TO GIVE A SIX MONTH DENIAL  
NO SECOND**

**SHARI ASPLUND MOVED AND JUSTIN TIN SECOND  
THE MOTION TO GRANT A TWELVE MONTH CONDITIONAL  
APPROVAL WITH A SIX MONTH REVIST BY THE SCHOOL SITE  
VISIT TEAM**

**YEAS: 2 (Asplund & Tin)**

**OPPOSED: 1 (Tong)**

**9. Public Comment Period:** Brian Fennen commented on legislation regarding Affredin.

**10. Adjournment**

The Acupuncture Board meeting adjourned at approximately 1:50 p.m.